

Fax Transmission

Date: 22 January 2002

To: **Renata Hesse, Trial Attorney**
Antitrust Division, US Department of Justice
Suite 1200
601 D Street NW
Washington, DC 20530

Fax: 202-616-9937 / 202-307-1545

From: Mark W. Knoll
8500 Ashton Court
Ypsilanti, MI 48198

Fax: 734-482-9439

E-mail: mknoll@mac-email.com

Re: Public comments concerning the proposed
settlement of the Microsoft antitrust case.

Number of pages (including cover sheet): 2

Tuesday, 22 January 2002

To whom it may concern:

I write today to express my strong conviction that the proposed settlement to the Microsoft antitrust case is not in the public interest. The remedies contained therein are far too lenient in comparison to the degree to which Microsoft's guilt was proven in court and upheld upon appeal.

The remedies proposed by the "Track 2" states represent a much more appropriate starting point than the proposed settlement for reining in Microsoft's anti-competitive behavior, but even these more stringent remedies do not go far enough to restore a level playing field in the computer industry. Microsoft's December 12th, 2001 filing with the Court, in which they object to the "Track 2" proposed remedies as being "punitive," indicates just how arrogant Microsoft has become. They were found guilty of illegal behavior and their guilt was upheld on appeal. The trial has now reached the stage where Microsoft's illegal conduct is to be punished and Microsoft still maintains they should not be punished at all! Microsoft's willingness to accept the proposed settlement is, in itself, proof that the settlement would do nothing to punish Microsoft.

The final outcome of the trial must accomplish three things:

- 1) Punish Microsoft for its illegal conduct
- 2) Compensate victims of Microsoft's illegal conduct
- 3) Constrain Microsoft from acting illegally in the future.

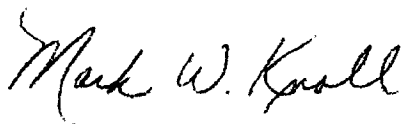
The proposed settlement in its current form addresses none of these issues in a meaningful way.

More important than the actual remedies themselves, however, is the compliance mechanism for the final judgment. Microsoft has already shown its willingness to ignore court-mandated behavioral remedies. They have written enough loopholes into the proposed settlement to insure that they can do so again with impunity should the settlement be approved. Whatever remedies the court imposes must be so crafted as to eliminate any wiggle room for Microsoft. It must be clear to all parties at all times whether Microsoft is in compliance or not. For this reason, Microsoft should have no input into the specific makeup of the compliance panel, nor any input into the determination of compliance. The compliance panel must be completely independent and free of Microsoft's influence.

The Court, at the recommendation of the compliance panel, must impose significant penalties for non-compliance, up to and including a "death penalty" for repeated violations. I suggest a three-strikes-and-you're-out policy. The first finding of non-compliance should be countered with a monetary fine in the billion dollar range, the second with a monetary fine in the ten billion dollar range. The third finding of non-compliance would result in a court-ordered ban on the sale in the US of all software determined to be out of compliance, and the rendering of all contracts to sell such software null and void. I propose as well the incarceration of senior Microsoft officials for contempt of court in the event of three findings of non-compliance.

I respectfully submit that the proposed settlement benefits no one except Microsoft. I urge the Court to reject it and to devise a penalty that will severely punish Microsoft for the massive harm caused by their illegal conduct. The Court has suggested that expediency in resolving this case is in the national interest. A flawed resolution in the name of expediency, however, will be far more damaging to our national interests.

Sincerely,



Mark W. Knoll
8500 Ashton Court
Ypsilanti, MI 48198